

1 Amount Necessary to Satisfy Legitimate Creditor Claims under 11 U.S.C. § 550(a).³
2 Plaintiff, Plan Trustee, Jared Parker (“Plaintiff” or “Plan Trustee”) filed a Response
3 (“Response”)⁴ to the Capping Motion and Defendants filed their Reply (“Reply”).⁵ The
4 Court heard oral argument (“Hearing”) on the Capping Motion.⁶

5 Having heard the parties’ arguments and having reviewed their briefs, this Court
6 now holds that Defendants’ Capping Motion is denied because there are genuine issues
7 of material fact as to the amount of allowable claims against this bankruptcy estate.
8 However, the Court will resolve the parties’ dispute regarding capping avoidance
9 recoveries under § 550(a) since doing so, in the Court’s opinion, might aid the parties in
10 settlement discussions. The Court is compelled to follow binding Ninth Circuit precedent.
11 The Court holds that the Plan Trustee’s recovery under § 550(a) is not capped at the
12 amount of allowed creditor claims.

13 14 **I. BACKGROUND**

15 **A. Debtor’s Bankruptcy.**

16 On February 21, 2018, Star Mountain Resources, Inc. (“Debtor”) filed its
17 voluntary chapter 11 bankruptcy petition.⁷ On April 18, 2018, the United States Trustee
18 appointed the official committee of unsecured creditors (“Unsecured Creditors’
19 Committee”).⁸ On May 8, 2019, the Unsecured Creditors’ Committee filed its Official
20 Committee of Unsecured Creditors’ Amended Chapter 11 Plan of Liquidation (“Plan”).⁹
21 The Court approved the Plan (“Confirmation Order”) on July 5, 2019.¹⁰ The

22 ³ Unless indicated otherwise, statutory citations refer to the U.S. Bankruptcy Code (“Code”), 11 U.S.C. §§ 101-
23 1532.

⁴ Adv. DE 235.

⁵ Adv. DE 238.

⁶ Adv. DE 256.

⁷ DE 1. “DE” references a docket entry in this administrative bankruptcy case (“Administrative Case”): 2:18-bk-
25 01594-DPC.

⁸ DE 42.

⁹ DE 334.

¹⁰ DE 355.

1 Confirmation Order created a liquidating trust (“Liquidating Trust”). The Plan Trustee
2 was appointed trustee of the Liquidating Trust (“Liquidating Trustee”) to “complete the
3 liquidation process, including any and all litigation.”¹¹

4 The Plan provided for the transfer of all Debtor’s assets to the Liquidating Trust
5 on the effective date of the Plan.¹² As of October 27, 2021, the Liquidating Trust held
6 assets in the aggregate amount of at least \$3,110,182.11.¹³ The Plan provides that, after
7 all allowed creditor claims are satisfied, the Plan Trustee must distribute remaining assets
8 to allowed equity interest holders (“Equity Holders”).¹⁴ Equity Holders from Classes 3-6
9 received beneficial interests in the Liquidating Trust, but the Plan also canceled all equity
10 shares in the Debtor.¹⁵

11 **B. Creditor Claims Against Debtor.**

12 The claims bar date in Debtor’s chapter 11 case was set for July 9, 2018.¹⁶ Aviano
13 Financial Group, LLC (“Aviano”) and SGS Acquisition, Ltd. (“SGS”) filed the two
14 largest claims against Debtor’s bankruptcy estate. Aviano filed a proof of claim asserting
15 an unsecured claim for \$118,211,597 (“Aviano Claim”).¹⁷ SGS filed a proof of claim
16 asserting an unsecured claim for \$28,300,000 (“SGS Claim”).¹⁸ Debtor filed objections
17 to the allowance of both the Aviano Claim and SGS Claim, neither of which have been
18 resolved.¹⁹ At the Hearing, the Plan Trustee confirmed he would actively pursue Debtor’s
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20 ¹¹ DE 355.

21 ¹² DE 334.

22 ¹³ Adv. DE 238 and Adv. DE 229. \$3,110,182.11 is the amount of assets Defendants allege the Liquidating Trust
23 holds. The Plan Trustee did not dispute this allegation. However, this amount is subject to change if the Plan Trustee
24 is successful in this Adversary Proceeding. The Liquidating Trust’s current assets would be reduced by the \$1
25 million note the Debtor received from the sale which the Liquidating Trustee now seeks to avoid. If the Liquidating
26 Trustee’s avoidance action is successful, he would also need to return the shares of Titan BC’s stock, which
Defendants transferred to the Debtor as consideration for the sale. Those shares at one point totaled \$2,968,900.

¹⁴ DE 334, page 13-14.

¹⁵ DE 334, page 13-14.

¹⁶ DE 59.

¹⁷ Proof of Claim (“POC”) 3-1.

¹⁸ POC 2-1.

¹⁹ DE 121 and DE 118.

1 objections against both of these claims.²⁰ Excluding the Aviano Claim and SGS Claim,
2 the aggregate amount of unpaid creditor claims totals \$2,707,681.26.²¹

3 Defendants allege that the potential universe of allowed creditor claims will
4 amount to no more than \$3,899,611.26 once the Aviano Claim and SGS Claim are finally
5 allowed or disallowed.²² This \$3,899,611.26 sum is comprised of the undisputed,
6 unpaid claims against the estate and \$1,191,930 for the Aviano Claim.²³ Defendants
7 argue that Aviano Claim cannot exceed \$1,191,930 and that the SGS Claim must be
8 denied in its entirety.²⁴

9 **C. The Adversary Proceeding.**

10 On November 19, 2019, Plaintiff initiated this Adversary Proceeding by filing a
11 complaint against Defendants.²⁵ On May 8, 2020, Plaintiff filed a Second Amended
12 Complaint (“Complaint”).²⁶ Count I of the Complaint asserts an actual and constructive
13 fraudulent transfer avoidance claim (“Fraudulent Transfer Claim”) against Defendants
14 under §§ 544, 548, and 550 and Nev. Rev. Stat. § 112.140.²⁷ The purported fraudulent
15 transfer stems from a December 30, 2016 Purchase Agreement (“Purchase
16 Agreement”)²⁸ entered into between Titan US, Titan BC, Northern Zinc LLC (“Northern
17 Zinc”), Debtor, Balmat Holding Corporation (“Balmat”), and St. Lawrence Zinc
18 Company, LLC (“SLZ”). The Purchase Agreement involved Titan US’s purchase of the
19 issued and outstanding shares of Balmat (“Balmat Shares”) from Northern Zinc.²⁹
20 Plaintiff’s Complaint asserts that Debtor and Northern Zinc are not distinct entities but,

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22 ²⁰ Adv. DE 256. The Court sees on the docket no evidence of any 2022 developments in this regard.

23 ²¹ Adv. DE 238. Comprised of (i) unpaid unsecured claims totaling \$2,507,681.26 and (ii) unpaid administrative
claims totaling \$200,000.

24 ²² Adv. DE 228.

25 ²³ Adv. DE 228

26 ²⁴ Adv. DE 228

27 ²⁵ Adv. DE 1.

28 ²⁶ Adv. DE 60.

29 ²⁷ Adv. DE 60.

²⁸ Adv. DE 64, Exhibit A.

²⁹ Adv. DE 64, Exhibit A.

1 rather, are one-and-the-same and that certain directors and officers of the Debtor
2 orchestrated the fraudulent transfer.³⁰ Defendants believe the Plan Trustee seeks to
3 recover \$70 - \$100 million on the Fraudulent Transfer Claim.³¹

4
5 **D. Summary of the Parties' Positions.**

6 i. Defendants' Capping Motion

7 Defendants seek to cap the Plan Trustee's potential recovery on the Fraudulent
8 Transfer Claim under § 550(a) at \$900,000, which Defendants argue is an amount more
9 than sufficient to fully pay all potentially legitimate creditor claims according to the
10 Plan.³² Defendants read § 550(a)'s phrase "for the benefit of the estate" as limiting the
11 Plan Trustee's ability to recover from an avoided transfer no more than the amounts
12 required to satisfy allowed creditor claims.³³ Put another way, Defendants contend
13 avoidance recoveries under § 550(a) cannot benefit Equity Holders.³⁴

14 ii. Plaintiff's Position

15 The Plan Trustee's Response disputes the Defendants' characterization of
16 § 550(a). The Plan Trustee argues that § 550(a)'s "for the benefit of the estate" language
17 sets no limit on the amount of recovery but requires only that an avoidance recovery
18 provide, at a minimum, some benefit to Debtor's creditors.³⁵ Essentially, the Plan Trustee
19 contends that § 550(a) only prevents Equity Holders from being the sole beneficiaries of
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22 ³⁰ Adv. DE 60.

23 ³¹ Adv. DE 256. The exact amount of damages the Plan Trustee seeks to recover on the Fraudulent Transfer Claim
24 is unknown. At the Hearing, Defendants stated that the Plan Trustee had made a demand for around \$70-\$100
25 million.

26 ³² Adv. DE 228, page 3. This amount is calculated by taking the value of the assets in the Liquidating Trust
(\$3,110,182.11), less what Defendants' claim to be the potential universe of allowed claims (\$3,899,611.26), plus
an additional cash cushion (\$110,570.85). This calculation, of course, ignores the Plaintiff's contention that, if the
transfer is avoided, the note and stock received by the Debtor will need to be returned to the transferor of such note
and stock.

³³ Adv. DE 228, page 8.

³⁴ Adv. DE 228, page 2-3.

³⁵ Adv. DE 235, page 5.

1 the recoveries on the Plan Trustee's avoidance actions.³⁶ The Plan Trustee argues that, if
2 he succeeds on the Fraudulent Transfer Claim, he may recover the value of the avoided
3 transaction in its entirety.³⁷

4 iii. Supplemental Briefing on § 726(a)

5 At the Hearing, the Plan Trustee argued that his interpretation of § 550(a)'s
6 meaning is supported by other sections of the Code, specifically § 726 ("§ 726
7 Argument").³⁸ Because the Plan Trustee did not raise the § 726 Argument in his initial
8 Response, Defendants sought to file supplemental briefing on the § 726 Argument.³⁹ The
9 Court also inquired whether § 541, which describes property of the estate, had any
10 bearing on the meaning of § 550(a).⁴⁰

11 The crux of the Plan Trustee's supplemental argument is that "for the benefit of
12 the estate" under § 550(a) cannot be read to limit excess recoveries because § 726(a)(6)
13 contemplates the distribution of a surplus estate to equity.⁴¹ The Plan Trustee's reasoning
14 can be broken down into three parts. First, § 550(a) refers to the principle that there must
15 be at least one creditor before a fraudulent transfer action may be brought ("Gating
16 Requirement").⁴² Second, once the Gating Requirement is satisfied, and assuming the
17 transfer is avoided, § 541(a)(4) provides that the transferred property becomes property
18 of the estate.⁴³ Finally, the Plan Trustee must distribute the estate property in accordance
19 with the priorities under § 726(a).⁴⁴

20 Defendants argue that the Plan Trustee's § 726 Argument is unsupported by the
21 actual language of the Code or caselaw.⁴⁵ Defendants also argue that the Plan Trustee's

22 ³⁶ Adv. DE 235, page 5.

23 ³⁷ Adv. DE 235, page 6-7.

24 ³⁸ Adv. DE 256.

25 ³⁹ Adv. DE 256.

26 ⁴⁰ Adv. DE 256.

⁴¹ Adv. DE 261.

⁴² Adv. DE 261, page 4-5.

⁴³ Adv. DE 261, page 5.

⁴⁴ Adv. DE 261, page 6.

⁴⁵ Adv. DE 254, page 3.

1 § 726 Argument is directly refuted by § 541(a)(3), which provides that only property
2 recovered under § 550(a) becomes property of the estate.⁴⁶

3 4 **II. JURISDICTION**

5 This Court has jurisdiction over this bankruptcy case and this Adversary
6 Proceeding pursuant to 28 U.S.C. §§ 1334 and 157(b)(2)(H).

7 8 **III. ISSUE**

9 The issue before the Court is, in the case of a confirmed chapter 11 liquidating
10 plan, whether the Liquidating Trustee's fraudulent transfer avoidance recovery under
11 § 550(a) may exceed the total amount of allowed creditor claims, thus enabling Equity
12 Holders to receive that surplus.

13 14 **IV. ANALYSIS**

15 **A. Motion for Summary Judgment.**

16 Bankruptcy Rule 7056 applies Rule 56 of the Federal Rules of Civil Procedure in
17 adversary proceedings. Under Rule 56, summary judgment is appropriate only if "the
18 movant shows that there is no genuine issue as to any material fact and the movant is
19 entitled to judgment as a matter of law."⁴⁷ At the summary judgment stage, the court does
20 not weigh the evidence or determine the truth of the matter but determines whether there
21 is a genuine issue for trial.⁴⁸ The moving party bears the initial burden of proving an
22 absence of a genuine issue of material fact.⁴⁹ Courts have held that the use of partial
23 summary judgment to determine the amount of recovery under § 550(a) is appropriate.⁵⁰

24 ⁴⁶ Adv. DE 254, page 4-5.

25 ⁴⁷ Fed. R. Civ. P. 56(a); Fed. R. Bankr. P. 7056.

26 ⁴⁸ *In re Marciano*, 459 B.R. 27, 52 (9th Cir. B.A.P. 2011) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

⁴⁹ *Celotex Corp v. Catrett*, 477 U.S. 317, 323 (1986).

⁵⁰ *See In re DSI Renal Holdings, LLC*, 2020 WL 550987, at *6 (Bankr. D. Del. Feb. 4, 2020) (holding the capping motion at issue was not an inappropriate advisory opinion).

1 Defendants have failed to demonstrate that there is no genuine issue of material
2 fact. The exact amount of allowed creditor claims against Debtor's estate is unknown and
3 cannot be determined at this time.⁵¹ The Plan Trustee is supposedly pursuing the Debtor's
4 objections to the allowance of the Aviano Claim and SGS Claim. The Court must deny
5 the Capping Motion for this reason and because Defendants' request is contrary to Ninth
6 Circuit law.

7 **B. Capping Avoidance Recoveries Under § 550(a).**

8 The purpose of avoiding fraudulent transfers is to "preserve assets of the
9 bankruptcy estate *for the benefit of creditors*, . . . and prohibit 'the transfer of a debtor's
10 property with either the intent or effect of placing the property beyond the reach of its
11 creditors'"⁵² (emphasis added).

12 The Code provides that the avoidance of a fraudulent transfer and recovery on
13 account of such avoided transfer are two distinctly separate concepts.⁵³ First, the trustee
14 or estate representative must demonstrate the right to avoid a transfer under §§ 544 and/or
15 548.⁵⁴ Once the trustee demonstrates the right to avoid the transfer, the trustee must then
16 establish the *amount* of recovery under § 550(a).⁵⁵ A trustee's right to avoid a fraudulent
17 transfer does not necessarily mean the trustee may actually recover the entire value of
18 that transfer under § 550(a).⁵⁶ For the purpose of this analysis, the Court will assume, *but*
19 *not decide*, that the Plan Trustee will succeed on his Fraudulent Transfer Claim.

20 Section 550(a) provides that:

21 to the extent that a transfer is avoided under section 544, . . . [or] 548 . . . , the
22 trustee may recover, *for the benefit of the estate*, the property transferred, or,
if the court so orders, the value of such property (emphasis added).

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⁵¹ Adv. DE 256.

24 ⁵² *In re Feiler*, 230 B.R. 164, 169 (9th Cir. B.A.P 1999).

25 ⁵³ *In re Acequia*, 34 F.3d 800, 809 (9th Cir. 1994).

26 ⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 811; *In re JTS Corp.*, 617 F.3d 1102, 1113 (9th Cir. 2010) (holding section 550(a) governs the extent of recovery).

1 The meaning of the phrase “for the benefit of the estate” is not defined in the Code
2 or discussed in the legislative history. Courts across the country have wrestled with the
3 meaning of this phrase. There are two viewpoints.⁵⁷ A few courts take a “narrow view”
4 of § 550(a), interpreting “benefit of the estate” to mean a direct benefit to creditors.⁵⁸
5 However, the majority of courts, including the Ninth Circuit, take a “broad” view of
6 § 550(a). Under the “broad view,” there is a “benefit to the estate” when creditors are
7 either directly or indirectly benefited by the trustee’s avoidance action.⁵⁹

8 Despite these differing views, the caselaw is clear that recovery under § 550(a)
9 must provide some benefit to creditors. A trustee or debtor-in-possession may not recover
10 the property transferred or its value *solely* for a debtor’s (*i.e.*, equity) benefit.⁶⁰

11 Here, there is no dispute that creditors stand to significantly benefit if the Plan
12 Trustee is successful on his Fraudulent Transfer Claim. The Plan Trustee’s recovery
13 under § 550(a) may make it possible to pay all allowed creditor claims in full under the
14 Plan. The heart of the parties’ dispute is whether the Plan Trustee can recover excess
15 funds under § 550(a) for the benefit of Debtor’s pre-petition Equity Holders.

17 ⁵⁷ See Ashley D. Champion, *Navigating the Upside Down: Whether § 550 Provides the Ceiling or Floor to Recovery*
18 *in Fraudulent Transfer Litigation*, 28 NO. 4 J. BANKR. L. & PRAC. NL. ART. 5 (2019) (providing an overview and
more in-depth discussion of the two viewpoints, often referred to as the ceiling and floor approach).

19 ⁵⁸ See *In re DSI Renal Holdings, LLC*, 2020 WL 550987, at *6 (holding “for the benefit of the estate” means “for
the benefit of creditors”); see also *In re Harstad*, 155 B.R. 500, 511-12 (Bankr. D. Minn. 1993) (dismissing the
preference action where payment to creditors would be unaffected by any recovery).

20 ⁵⁹ See *In re Acequia*, 34 F.3d at 811(holding courts construe the “benefit to the estate” requirement broadly,
21 permitting recovery under section 550(a) even in cases where distribution to unsecured creditors is fixed by the plan
of reorganization and in no way varies with recovery of avoidable transfers); see also *In re Trans World Airlines,*
22 *Inc.*, 163 B.R. 964, 973 (Bankr. D. Del. 1994) (holding that unsecured creditors would benefit from the enhanced
value of the reorganized debtor by reason of their shareholder interest); *In re Centennial Industries, Inc.*, 12 B.R.
99,102-103 (Bankr. S.D.N.Y. 1981) (reasoning that recovery would benefit the estate even where payments to
unsecured creditors were fixed because it would increase the likelihood of creditors receiving their future payments).

23 ⁶⁰ See *In re Acequia*, 34 F.3d at 811, citing with approval *Wellman v. Wellman*, 933 F.2d 215, 218 (4th Cir. 1991)
24 (holding “a debtor-in-possession of a bankruptcy estate cannot maintain an avoidance action . . . unless the estate
would be benefited by the recovery of the transferred property”); see also *In re New Life Adult Medical Care Center,*
25 *Inc.*, 2014 WL 6851258, at *6 (Bankr. D. N. J. Dec. 3, 2014) (granting summary judgment in favor of transferee
where only equity stood to benefit from any recovery because the chapter 11 liquidating plan provided for full
26 repayment of all creditor claims); *Adelphia Recovery Trust v. Bank of Am., N.A.*, 390 B.R. 80, 92-97 (S.D.N.Y.
2008) (finding that an avoidance action could not be maintained in a circumstance where creditors did not stand to
receive any benefit from the recovery).

1 i. Moore v. Bay's Application to § 550(a)

2 Some courts hold that § 550(a)'s phrase "for the benefit of the estate" codifies the
3 Supreme Court's 1931 decision in *Moore v. Bay*.⁶¹ In *Moore*, the Supreme Court
4 considered whether a trustee's recovery on a fraudulent transfer claim under the 1898
5 Bankruptcy Act⁶² was limited to the rights of unsecured creditors with a valid state law
6 claim (*i.e.*, "the triggering creditor").⁶³

7 In *Moore*, the debtor granted a creditor a lien on his personal property that was
8 determined to be invalid under state law and therefore avoidable under the 1898
9 Bankruptcy Act.⁶⁴ The sole issue before the Court was whether the lien was avoidable as
10 to creditors who had extended credit after the lien was recorded.⁶⁵ The Court held that
11 the trustee could avoid the lien on the debtor's property for the "benefit of the estate . . .
12 distributed in 'dividends of an equal per centum on all allowed claims . . .'"⁶⁶ In essence,
13 the Court held that even creditors who could not have brought the fraudulent transfer
14 action on their own behalf under state law could benefit from the trustee's avoidance
15 action.⁶⁷

16 Courts and litigants across the country, including the Ninth Circuit, have relied on
17 *Moore* for the proposition that a trustee may recover the value of the transfer in its entirety
18 for the benefit of all creditors.⁶⁸ However, the application of *Moore* to avoidance
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20 ⁶¹ See *Congress Credit Corp. v. AJC Intern*, 186 B.R. 555, 558 (D.P.R. 1995); see also *In re DLC, Ltd.*, 295 B.R.
21 593, 606 (8th Cir. B.A.P. 2003).

22 ⁶² § 70e of the 1898 Bankruptcy Act was the precursor to § 544 of the Code.

23 ⁶³ *Moore v. Bay*, 284 U.S. 4 (1931).

24 ⁶⁴ *Id.*

25 ⁶⁵ *Id.*

26 ⁶⁶ See *id.*

⁶⁷ *Id.*

⁶⁸ See *In re JTS Corp.*, 617 F.3d at 1112-13 (holding that the Supreme Court in *Moore* and the Ninth Circuit have interpreted claims under § 544 and § 550 to require that "once avoidance is shown, the trustee's recovery cannot be limited in certain situations"); *In re Tronox*, 464 B.R. 606, 616 (Bankr. S.D.N.Y. 2012) (holding that "[b]ecause a trustee's recovery under § 544(b) is governed by § 550, it follows that Congress intended to incorporate *Moore*'s rule of complete avoidance into § 550); *In re Parjaro Dunes Rental Agency Inc.*, 174 B.R. 577, 596 (Bankr. N.D. Cal. 1994) (holding *Moore* stands for the proposition that "improper transfers may be avoided in their entirety, regardless of the relationship between the size of the transfer and the amount of unsecured claims").

1 recoveries under § 550(a) is not without criticism.⁶⁹ Interestingly, the 1973 Report from
2 the Commission on the Bankruptcy Laws of the United States (“Commission”) recommended

3 that *Moore v. Bay* be overruled; this is done by the addition of the phrase ‘to
4 the extent of such allowable claim or claims for the benefit of such creditor or
5 creditors’ Consistent with the overruling of *Moore v. Bay*, any judgment
6 recovered by the trustee on such claim should benefit only the creditors on
whose behalf such claims were asserted in the suit.⁷⁰

7 The Commission’s recommendation was derived from §70e(1) and (2) of the 1898
8 Bankruptcy Act but overruled *Moore*, “which allowed the trustee to avoid a transfer or
9 obligation entirely without regard to the size of the claims of the creditors whose rights
10 and powers the trustee was asserting”⁷¹ But, alas, Congress did not adopt the
11 Commission’s recommendation. *Moore*’s application is supported by the Ninth Circuit’s
12 holding in *In re Acequia*.⁷²

13 ii. Ninth Circuit: *In re Acequia*

14 *In re Acequia* is the Ninth Circuit’s seminal case addressing a trustee’s recovery
15 on a fraudulent transfer claim under § 550(a).⁷³ In *Acequia*, the defendant, debtor’s
16 former controlling shareholder, fraudulently transferred the debtor’s assets to himself.⁷⁴
17 At the time of bankruptcy, defendant and his ex-wife each held a 50% ownership interest

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20 ⁶⁹ See *In re DSI Renal Holdings LLC*, 2020 WL 550987, at *9 (holding the Supreme Court’s decision in *Moore* was
21 not relevant to the issue of whether the trustee’s avoidance recoveries under § 550(a) may be limited); see also
22 Robert B. Bruner, *The Unexplored Limits of Moore v. Bay: Statutory and Equitable Basis for Limiting Money
Damage Awards on Fraudulent Transfer Claims*, 26 NO. 3. J. BANKR. L. & PRAC. NL ART. 2 (2017) (discussing
why *Moore v. Bay*’s application should be limited to allow bankruptcy courts judicial discretion to limit fraudulent
transfer money judgments); Emily A. Klienhaus, *Let’s Rethink Moore v. Bay*, ABI Journal (Sept. 2015) (noting that
Moore v. Bay’s application may lead to “extraordinary results”).

23 ⁷⁰ EXECUTIVE DIRECTOR, COMMISSION ON THE BANKRUPTCY LAWS OF THE UNITED STATES, 93D CONG. REP. OF THE
COMMISSION ON THE BANKRUPTCY LAWS PART I (Comm. Print 1973).

24 ⁷¹ EXECUTIVE DIRECTOR, COMMISSION ON THE BANKRUPTCY LAWS OF THE UNITED STATES, 93D CONG. REP. OF THE
COMMISSION ON THE BANKRUPTCY LAWS PART II (Comm. Print 1973).

25 ⁷² See Robert L. Haig & Alexander Lees, § 152:31. *Remedies in bankruptcy*—“For the benefit of the estate,” 14
BUS. & COM. LITIG. FED. CTS. § 152.31 5TH ED. (Dec. 2021) (noting *In re Acequia* interprets *Moore* expansively,
meaning the entire transfer may be recovered even if creditors have been paid in full).

26 ⁷³ *In re Acequia*, 34 F.3d at 800.

⁷⁴ *Id.* at 803.

1 in the debtor pursuant to their marital settlement agreement.⁷⁵ The debtor's chapter 11
2 plan of reorganization provided for the full repayment of all creditor claims.⁷⁶

3 In a post-confirmation fraudulent transfer action filed with the bankruptcy court
4 and then removed to the District Court of Idaho, Magistrate Judge Mikel Williams⁷⁷ held
5 that the defendant transferred the debtor's assets with actual fraudulent intent.⁷⁸ The
6 Magistrate Judge found that at the time of the fraudulent transfer, the defendant
7 maintained complete control over the debtor's finances and had no documentation
8 explaining the transfers to himself.⁷⁹

9 In *Acequia* the Magistrate Judge also held that debtor's standing under § 544(b)
10 to recover "for the benefit of the estate" was capped at the total amount of unsecured
11 creditor claims since the unsecured creditors were paid in full under the debtor's plan of
12 reorganization.⁸⁰ Although the trial court did not expressly consider § 550(a), the court
13 held that "[t]o allow *Acequia* to recover *more* than it paid out to unsecured creditors
14 would necessarily benefit the debtor . . . to the extent of several million dollars over the
15 amount of unsecured claims that were paid."⁸¹

16 On appeal, the Ninth Circuit held that the "[M]agistrate [J]udge erred by limiting
17 [debtor's] recovery of the fraudulent transfers to the amount of unsecured claims against
18 the bankruptcy estate."⁸² In reaching its decision, the Circuit explicitly recognized the
19 separate concepts of avoiding a transfer and recovery from a transferee.⁸³ The Ninth
20 Circuit held that that "[w]hile [a] transfer or obligation must be voidable as against a
21 creditor holding an allowable claim, *the measure and distribution of recovery is not*

22 ⁷⁵ *Id.* at 803.

23 ⁷⁶ *Id.* at 807.

24 ⁷⁷ The parties in *Acequia* consented to the Magistrate Judge's entry of final orders in that District Court action.

25 ⁷⁸ *Id.* at 804-805.

26 ⁷⁹ *Id.* at 806.

⁸⁰ *In re Acequia*, 34 F.3d at 810.

⁸¹ *Id.* at 811.

⁸² *Id.* at 809.

⁸³ *See id.* at 809.

1 *limited by the creditor's right.*"⁸⁴ To illustrate this point, the Circuit provided a scenario
2 of a debtor who makes four separate transfers for \$10 each before bankruptcy. The Circuit
3 emphasized that, once in bankruptcy, the trustee could avoid any of the four transfers,
4 totaling \$40, even if there existed only one unsecured creditor with a claim for \$5.⁸⁵

5 In *Acequia*, the Ninth Circuit explicitly disagreed with the defendant's contention
6 that the law "does not justify invoking section 544(b) once a trustee recovers transfers in
7 an amount sufficient to satisfy unsecured claims."⁸⁶ The Circuit reasoned that if the
8 defendant were correct, a party could escape fraudulent transfer liability "merely by
9 making several small transfers instead of one large transfer."⁸⁷

10 The Ninth Circuit also disagreed with the Magistrate Judge's implicit
11 determination that recovery over the amount of unsecured creditor claims would only
12 benefit the debtor and not the estate.⁸⁸ Citing *Collier* with approval, the court noted that
13 "in general, the trustee . . . may not recover the property transferred or its value when the
14 result is to benefit *only* the debtor rather than the estate" (emphasis added).⁸⁹ However,
15 adopting the "broad view" of § 550(a), the Ninth Circuit found that the debtor's surplus
16 recovery would "benefit the estate" by (1) aiding the debtor's post-confirmation
17 repayment obligations under the plan of reorganization, including payments under a long-
18 term note, and (2) reimbursing the bankruptcy estate for the costs of pursuing the
19 avoidance action.⁹⁰

20 Unlike the Magistrate Judge, the Ninth Circuit was not concerned with a surplus
21 recovery providing the debtor a "windfall."⁹¹ The Circuit reasoned that the debtor had a
22 "greater equitable claim to the transferred funds," given the fact that the defendant—the

23 ⁸⁴ *Id.* at 809, citing with approval 4 *Collier on Bankruptcy* ¶ 544.03[1] at 544-17 (15th ed. 1994).

24 ⁸⁵ *Id.* at 809.

25 ⁸⁶ *In re Acequia*, 34 F.3d at 810.

26 ⁸⁷ *Id.*

⁸⁸ *Id.* at 811.

⁸⁹ *Id.*, citing *Collier on Bankruptcy* ¶ 550.02 at 550-6 to 550-7 (15th ed. 1994).

⁹⁰ *Id.* at 811-12.

⁹¹ *Id.* at 811-12.

1 sole perpetrator of the fraudulent transfer—acted with actual fraudulent intent in
2 transferring the debtor’s assets to himself on the precipice of bankruptcy.⁹² The Ninth
3 Circuit reasoned that allowing the debtor to recover the entire value of the fraudulent
4 transfer would “merely make the bankruptcy estate whole.”⁹³

5 In *Acequia*, the Ninth Circuit did not explicitly define § 550’s phrase “for the
6 benefit of the estate.” However, by emphasizing that the purpose of recovery is to make
7 the “estate whole,” the court effectively held that the “estate” is not limited solely to
8 creditors’ interests in estate property, but includes equity holders’ interests in estate
9 property.⁹⁴ In essence, the Ninth Circuit was not concerned with whether a surplus
10 recovery benefited equity holders so long as the estate was restored to the condition it
11 would have been had the transfer never occurred.

12 In the case at bar, Defendants correctly note that the Ninth Circuit in *Acequia* was
13 presented with very different facts than this Court. The debtor in *Acequia* reorganized
14 and continued operations post-confirmation.⁹⁵ Here, the Debtor is liquidating. In
15 *Acequia*, the debtor’s excess avoidance action recovery provided a continued benefit to
16 creditors by bolstering the debtor’s post-confirmation repayment obligations, improving
17 the likelihood of a successful reorganization.⁹⁶ Here, any surplus recovery over the
18 amount needed to satisfy creditor claims will benefit Equity Holders, and those Equity
19 Holders were not issued new stock under the Plan. In fact, their pre-petition stock was
20 cancelled and only their interests in the Liquidating Trust remains.

21 Despite these differences, this Court cannot ignore the Ninth Circuit’s plain, if not,
22 sweeping pronouncement that the entire avoided transfer or its value may be recovered
23

24 ⁹² *In re Acequia*, 34 F.3d at 812.

25 ⁹³ *Id.*

25 ⁹⁴ *See id*; *see also In re DLC, Ltd.*, 295 B.R. at 607 (holding “the ‘estate’ is not synonymous with the concept of a
pool of assets to be gathered for the sole benefit of unsecured creditors”).

26 ⁹⁵ *Id.* at 803.

⁹⁶ *Id.* at 812.

1 under § 550(a) even if allowed creditor claims are paid in full.⁹⁷ Since the Ninth Circuit’s
2 decision in 1994, lower courts often cite *Acequia* for the proposition that § 550(a)’s
3 phrase “for the benefit of the estate” does not cap recovery but sets a minimum floor—
4 some “benefit to the estate”—which the Ninth Circuit interprets broadly.⁹⁸

5 iii. Survey of Cases Outside the Ninth Circuit

6 The Plan Trustee cites numerous cases outside of the Ninth Circuit where courts
7 have also refused to cap the amount of recovery under § 550(a).

8 In *In re Tronox*, the Southern District of New York Bankruptcy Court considered
9 whether § 550’s “for the benefit of the estate” clause limited the debtor’s recovery at the
10 amount of unpaid creditor claims.⁹⁹ Prior to bankruptcy, the debtor’s predecessor
11 transferred valuable oil and gas assets to the defendant through a multi-staged
12 transaction.¹⁰⁰ The purpose of the transaction was to shield the debtor’s assets from
13 environmental and tort liabilities.¹⁰¹ The transfer left the chapter 11 debtor
14 undercapitalized and saddled with legacy liabilities.¹⁰² In consideration for plan support,
15 the debtor settled with certain environmental and tort creditors who agreed to receive the
16 proceeds, if any, from the fraudulent transfer avoidance action in return for satisfaction
17 of their claims.¹⁰³ The settlement, in turn, made it possible for the debtor to provide
18 general unsecured creditors an equity stake in the reorganized debtor, free of the legacy
19 liabilities.¹⁰⁴ The debtor listed the value of the environmental and tort creditors’ claims
20 at anywhere between \$1.9 - \$6.2 billion in debtor’s disclosure statement.¹⁰⁵ The debtor

21 ⁹⁷ *Id.* at 803.

22 ⁹⁸ *See In re CVAH, Inc.*, 570 B.R. 816, 840 (Bankr. D. Idaho 2017) (finding *Acequia* held “it was improper to limit
23 a trustee’s recovery under § 544(b)(1) and § 550 to the amount of unsecured claims in the bankruptcy case”); *see also In re Burn*, 360 B.R. 669, 672 (Bankr. C.D. Cal. 2007) (citing *Acequia* for the proposition that the trustee’s
24 recovery should not be limited by the amount of the creditor’s claim).

25 ⁹⁹ *In re Tronox*, 464 B.R. 606, 611 (Bankr. S.D.N.Y. 2012).

26 ¹⁰⁰ *Id.* at 609.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.* at 610.

¹⁰⁴ *Id.* at 610.

¹⁰⁵ *In re Tronox Inc.*, 464 B.R. at 611.

1 sought to recovery approximately \$15.5 billion in the fraudulent transfer adversary
2 proceeding.¹⁰⁶

3 The defendant argued that § 550(a)'s phrase "for the benefit of the estate" capped
4 the debtor's recovery at the amount of unsecured claims.¹⁰⁷ The debtor argued that the
5 plain language of § 550 and relevant case law imposed no limit on its potential
6 recovery.¹⁰⁸

7 Relying on the Ninth Circuit's decision in *Acequia*, the court held that "once an
8 avoidance action creates some benefit for creditors . . ." § 550(a)'s language "for the
9 benefit of the estate" does not cap the debtor's recovery.¹⁰⁹

10 The court reasoned that its holding was supported by the Code, the policy behind
11 § 550(a) and the trustee's avoidance powers. First, the court found that § 541, which
12 defines the "estate" as "all legal or equitable interests of the debtor in property as of the
13 commencement of the case," supported the court's conclusion that the "estate" was not
14 limited to only the interests of creditors.¹¹⁰ Next, the court proposed that Congress could
15 have written § 550(a) to explicitly state that the trustee could recover an avoided transfer
16 only "*to the extent of* benefit to the estate," if Congress had intended the phrase to limit
17 recovery on an avoidance action.¹¹¹

18 Third, the *Tronox* court reasoned that § 550's plain language and underlying
19 policy of "restoring the estate to its position prior to the transfer" supported not capping
20 the debtor's recovery under § 550(a).¹¹² Finally, the *Tronox* court discussed the
21 differences between state fraudulent transfer laws and a bankruptcy estate
22 representative's avoidance powers. While state fraudulent transfer laws provide that "a

23 ¹⁰⁶ *Id.*

24 ¹⁰⁷ *Id.* at 609.

25 ¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 614, citing *In re Acequia*, 34 F.3d at 811.

¹¹⁰ *In re Tronox Inc.*, 464 B.R. at 614.

26 ¹¹¹ *Id.*

¹¹² *Id.*

1 creditor in a fraudulent transfer action may not recover more than ‘the amount necessary
2 to satisfy the creditor’s claim,’” the court highlighted that no such limit applies in
3 bankruptcy.¹¹³ An action “pursued by a bankruptcy estate representative [is] on behalf of
4 the ‘estate.’”¹¹⁴ The court concluded that § 550’s “for the benefit of the estate”
5 requirement was satisfied through the settlement with the environmental and tort
6 creditors, which directed all recovered proceeds in the adversary proceeding to creditors
7 and provided general unsecured creditors an equity interest in the reorganized debtor.¹¹⁵

8 In *In re Trans World Airlines* (“TWA”)¹¹⁶ and *MC Asset Recovery, LLC, v.*
9 *Southern Co.* (“MC Asset”),¹¹⁷ the courts refused to cap damages under § 550(a) even
10 though all creditor claims were paid in full. Those courts reasoned that the excess
11 avoidance recoveries would “benefit the estate” because unsecured creditors had received
12 stock in the reorganized debtor on behalf of their allowed claims.¹¹⁸

13 iv. This Court’s Discomfort in Applying *Acequia*’s Mandate to This Case

14 A common theme binds the *Tronox*, *TWA*, and *MC Asset* cases, making them
15 distinguishable from the case before this Court. In all three cases, the debtors were
16 undergoing a reorganization. The debtors’ plans of reorganization also provided creditors
17 with an equity stake in the reorganized entity on account of their claims. Here, the Debtor
18 is liquidating, and the Plan does not provide creditors with any equity stake in the Debtor.
19 The *Tronox*, *TWA*, and *MC Asset* courts did not confront the issue of whether a *liquidated*
20 debtor’s pre-petition equity holders were entitled to a surplus recovery under § 550(a).

21 These distinguishing features give the Court reason to pause, especially because
22 this Court finds Judge Owens’ recent decision in *In re DSI Renal Holdings, LLC* (“*DSI*
23

24 ¹¹³ *Id.* at 615-16.

25 ¹¹⁴ *Id.*

26 ¹¹⁵ *Id.* at 617 (holding there “is no cap on, ... recovery other than the value of the property fraudulently transferred”).

¹¹⁶ *In re Trans World Airlines, Inc.*, 163 B.R. at 974.

¹¹⁷ *MC Asset Recovery, LLC v. Southern Co.*, 2006 WL 5112612, at *7.

¹¹⁸ *Id.*; *In re Trans World Airlines, Inc.*, 163 B.R. at 969.

1 *Renal Holdings*”) ¹¹⁹ involving a liquidated debtor to be the most factually analogous case
2 to the case at bar. The issue before Judge Owens was whether a chapter 7 trustee could
3 recover more than the amount of the allowed claims asserted against the debtors’ estate,
4 enabling the debtors’ equity holders to benefit from the excess recovery. ¹²⁰

5 The trustee’s fraudulent transfer action in *DSI Renal Holdings* stemmed from a
6 complex pre-petition restructuring agreement effectuated by certain defendants,
7 including the debtors’ directors and officers. ¹²¹ As a result of the complex transaction,
8 the debtors were stripped of their valuable assets, namely a renal business, for little to no
9 consideration. ¹²² A little over a year later, the assets were sold to a non-defendant third
10 party for \$689 million. ¹²³ The trustee sought \$678 million in damages on account of the
11 estate’s fraudulent transfer avoidance action. ¹²⁴ The debtors’ claim register showed only
12 approximately \$166 million in creditor claims. ¹²⁵ The court noted that if the trustee were
13 to recover \$678 million, all creditor claims would be paid in full and there would be a
14 substantial surplus distribution to the debtors’ equity holders. ¹²⁶

15 The defendants in *DSI Renal Holdings* argued that § 550(a) prevented the trustee
16 from recovering more than the amount necessary to pay all allowed creditor claims. ¹²⁷
17 The trustee, relying on *Tronox*, argued § 550(a) did not limit his recovery but only
18 “require[d] . . . that avoidance proceeds provide, at minimum, some benefit to
19 creditors.” ¹²⁸ The trustee further relied on the Supreme Court’s decision in *Moore* to
20 support his argument that the challenged transfer should be “avoided in its entirety . . . to
21

22 ¹¹⁹ *In re DSI Renal Holdings, LLC*, 2020 WL 550987, at *1.

23 ¹²⁰ *Id.* at *4.

24 ¹²¹ *Id.* at *3.

25 ¹²² *Id.* at *3.

26 ¹²³ *Id.* at *4.

¹²⁴ *Id.* at *4.

¹²⁵ *In re DSI Renal Holdings*, 2020 WL 550987, at *4.

¹²⁶ *Id.*

¹²⁷ *Id.* at *4.

¹²⁸ *Id.*

1 restore the [d]ebtors' estates to their prior position regardless of the quantum of creditor
2 claims."¹²⁹

3 Relying on Third Circuit precedent, Judge Owens held that the trustee's recovery
4 under § 550(a) was limited to the "total amount necessary to satisfy all allowed creditor
5 claims and expenses in the [d]ebtors' bankruptcy case as provided for under section
6 726(a)(1)-(5)," including the allowed compensation of the trustee and his
7 professionals.¹³⁰ Judge Owens reasoned that receipt of a more substantial recovery would
8 be impermissible because it "provide[d] no accompanying benefit to creditors," given
9 that the creditors would be fully paid.¹³¹ The court further held that such excess recovery
10 would "give rights and value to the [d]ebtors to which they were not entitled outside, nor
11 were given inside, bankruptcy."¹³²

12 Judge Owens supported her holding by distinguishing the courts' decisions in
13 *Tronox* and *TWA*. First, Judge Owens noted that the *Tronox* and *TWA* courts were tasked
14 with a different question—"whether creditors may receive *more than* their allowed
15 claims from avoidance recoveries."¹³³ Judge Owens reasoned that, unlike the creditors
16 in *Tronox* and *TWA*, who received an equity stake in the reorganized debtor, recoveries
17 above the amount of creditor claims in the debtors' chapter 7 case provided no
18 accompanying benefit to creditors once paid in full.¹³⁴

19 Finally, Judge Owens debunked the chapter 7 trustee's reliance on *Moore*. Judge
20 Owens clarified that the Supreme Court's decision in *Moore* addressed whether
21 "avoidance and recovery under section 544 is for the benefit of all creditors . . . and . . .
22 not limited to the amount of the triggering creditors' claims."¹³⁵ Judge Owens notably

23 ¹²⁹ *Id.*

24 ¹³⁰ *Id.* at *9.

25 ¹³¹ *In re DSI Renal Holdings*, 2020 WL 550987, at *7.

26 ¹³² *Id.*

¹³³ *Id.* at *8.

¹³⁴ *Id.* at *8.

¹³⁵ *In re DSI Renal Holdings*, 2020 WL 550987, at *9.

1 concluded that the Court’s decision in *Moore* was irrelevant to the decision of whether
2 to cap avoidance recoveries to the extent such recoveries only benefited debtor’s pre-
3 petition equity holders, like in the debtors’ case.¹³⁶

4 Like *DSI Renal Holdings*, the Plan Trustee here seeks to recover anywhere from
5 \$70 - \$100 million on his Fraudulent Transfer Claim, while Defendants allege the
6 potential universe of creditor claims totals no more than approximately \$3.8 million.¹³⁷
7 Although the Court is not determining the allowed amount of creditor claims, taking
8 Defendants’ \$3.8 million estimate as true would mean Equity Holders could realize
9 approximately \$66 million¹³⁸ from the Plan Trustee’s avoidance action.

10 Given the liquidating nature of Debtor’s case and the specific facts presented in
11 the case at bar, the Court finds Judge Owens’ reasoning in *DSI Renal Holdings* germane
12 to this Adversary Proceeding. Although the debtor in *DSI Renal Holdings* was in a
13 chapter 7 liquidation, this difference is immaterial.¹³⁹ Judge Owens’ sound reasoning
14 equally applies to a chapter 11 liquidation. However, it should be noted that Judge
15 Owens’ ruling was largely the inescapable product of binding Third Circuit precedent.¹⁴⁰
16 The Third Circuit interprets § 550(a)’s phrase “for the benefit of the estate” to mean “for
17 the benefit of creditors,” prohibiting debtors from benefiting from the trustee’s avoidance
18 powers.¹⁴¹

19 In this Court’s view, allowing Debtor’s Equity Holders—some of whom
20 orchestrated the allegedly fraudulent transfer—to recover a surplus to the tune of millions
21 of dollars would produce an absurd result. For example, under *Acequia*’s reasoning, a

22 ¹³⁶ *Id.*

23 ¹³⁷ Adv. DE 228 and Adv. DE 256.

24 ¹³⁸ The Court reaches this number by subtracting the alleged potential universe of allowed creditor claims (\$3.8 million) from the minimum recovery value the Plan Trustee seeks (\$70 million).

25 ¹³⁹ See *In re DSI Renal Holdings*, 2020 WL 550987, at *6.

26 ¹⁴⁰ *Id.* at *6.

¹⁴¹ See *Id.*, citing *In re Majestic Star Casino LLC*, 716 F.3d 736, 761 (3d Cir. 2013) (concluding that “[a] debtor is not entitled to benefit from any avoidance”); *In re Messina*, 687 F.3d 74, 82(3d Cir. 2002) (holding “for the debtors to obtain equity, they must have avoidance powers themselves or the ability to benefit from those of the trustee”); *In re Cybergenics Corp.*, 226 F.3d 237, 243-47 (3d Cir. 2000) (holding the debtor cannot invoke avoidance powers).

1 \$1,000 allowed unsecured claim would open the door to a trustee filing a fraudulent
2 transfer avoidance adversary proceeding, and despite the *de minimis* claim amount, the
3 trustee could be in line to recover tens of millions of dollars for the benefit of the debtor's
4 pre-petition equity holders. But for the \$1,000 unsecured claim, the equity holders
5 themselves could not have pursued that fraudulent transfer action or benefited from the
6 recovery. While the Court recognizes that many of Debtor's Equity Holders were not
7 involved in the alleged fraudulent transfer, their remedy should not be found in the Plan
8 Trustee's avoidance powers under §§ 544 and 548 or the recovery on the avoided transfer
9 under § 550(a). Innocent equity holders have rights outside of bankruptcy, which could
10 remedy any damages they sustained by virtue of the fraudulent transfer orchestrated by
11 the Debtor's directors and officers.¹⁴²

12 The Court further questions the fact that the Plan Trustee's substantial recovery
13 will benefit not only Equity Holders but the Plan Trustee's counsel, whose 45%
14 contingency fee arrangement undoubtedly plays a role in the demand for recovery to
15 Equity Holders. In this Court's view such outcome does not support the underlying
16 purpose of fraudulent transfer laws. Fraudulent transfer laws were designed to allow a
17 creditor to avoid an improper transaction by a debtor who unfairly reduced its assets to
18 the detriment of its creditors.¹⁴³ The Plan Trustee's fraudulent transfer avoidance powers
19 are, at bottom, creditor remedies. Moreover, in this Court's view, the fundamental
20 purpose of recovery under § 550(a) should be to enlarge the estate *for the benefit of*
21 *creditors*.¹⁴⁴

22
23
24
¹⁴² Shareholders, in general, have many legal remedies outside of bankruptcy to hold directors and officers
25 accountable, including actions for corporate waste, breach of fiduciary duty, and shareholder derivative lawsuits,
26 none of which were brought here.

¹⁴³ *In re JTS Corp.*, 617 F.3d at 1111.

¹⁴⁴ *In re Feiler*, 230 B.R. at 169; *Kipperman v. Onex Corp.*, 411 B.R. 805, 876 (N.D. Ga. 2009).

1 **C. The § 726 Argument.**

2 Lastly, to address all the parties' arguments, the Court must say it is not persuaded
3 by the Plan Trustee's § 726 Argument. Although § 726(a)(6) provides for the distribution
4 of a surplus estate to the debtor or, in this case, Equity Holders, § 726 does not have any
5 direct bearing on whether recovery under § 550(a) is "for the benefit of the estate."

6 The Plan Trustee's argument that, if the transfer is avoided, the fraudulently
7 transferred property or its value comes back into the estate under § 541(a)(4) does not
8 apply to the case at bar. Section 541(a)(4) applies to property that is either preserved for
9 the estate's benefit or ordered transferred to the estate under §§ 510(c) or 551, neither of
10 which apply here. Section 510(c) involves the equitable subordination of claims, while
11 § 551 prevents junior lienholders from improving their position at the expense of the
12 estate when a trustee avoids a senior lien.¹⁴⁵

13 If § 541(a)(4) did apply to the facts at hand, the Plan Trustee's interpretation of
14 § 541(a)(4) would render § 541(a)(3) meaningless.¹⁴⁶ Section 541(a)(3) expressly
15 provides that only property recovered by the trustee pursuant to an avoidance action
16 becomes property of the estate. The fact that a distinctly separate subparagraph of § 541
17 references property recovered by a trustee from a fraudulent transfer avoidance action
18 under § 550, highlights Congress's intent that avoidance recoveries are not subject to
19 § 726's distribution scheme until actually realized and brought into the estate under
20 § 541(a)(3).¹⁴⁷

21
22 **D. The Plan Trustee's Recovery is Not Capped By § 550(a).**

23 Notwithstanding this Court's belief that the Third Circuit and *DSI Renal Holdings*
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25 ¹⁴⁵ *In re Van de Kamp's Dutch Bakeries*, 908 F.2d 517, 519 (9th Cir. 1990) citing S. Rep. No. 989, 95th Cong., 2d
Sess. 91 (1978).

26 ¹⁴⁶ Adv. DE 261, page 5.

¹⁴⁷ *Collier on Bankruptcy* ¶ 550.02[2] at 550-8 to 550-9 (16th ed. 2011).

1 correctly analyzed § 550(a), this Court is bound by the Ninth Circuit's sweeping
2 pronouncement in *Acequia* to the effect that recovery under § 550 is not capped at the
3 amount of allowed creditor claims.¹⁴⁸ The Court questions the wisdom of applying
4 *Acequia*'s holding in a liquidation context where recovery above the amount needed to
5 pay allowed creditor claims will provide no accompanying benefit to creditors. Debtor's
6 confirmed liquidation Plan did not distribute to allowed creditors an equity interest in the
7 Debtor.¹⁴⁹ A distribution to equity from this Adversary Proceeding will not serve to
8 support a reorganized, operating entity, but will solely benefit Equity Holders on account
9 of their pre-petition equity interests in the Debtor. The Court, nonetheless, must find that
10 the Plan Trustee's transfer avoidance recovery, if any, is not limited to the amount
11 necessary to pay all allowed creditor claims against the Debtor's estate.

12 13 **V. CONCLUSION**

14 For the reasons stated above, Defendants' Capping Motion is hereby denied.
15 Genuine issues of material facts exist as to the potential universe of allowed creditor
16 claims in this case. However, to aid the parties as they continue to prepare for trial, the
17 Court hereby advises the parties that it is compelled to find that, based on Ninth Circuit
18 precedent, the Plan Trustee's recovery, if any, under § 550(a) in this fraudulent transfer
19 avoidance Adversary Proceeding will not be limited by the amount of allowed creditor
20 claims against this estate.

21
22 **IT IS ORDERED**

23 **DATED AND SIGNED ABOVE.**

24 ¹⁴⁸ *In re Acequia*, 34 F.3d at 804.

25 ¹⁴⁹ At the Hearing, the Court asked the Plan Trustee whether any party had traded a claim against the estate for an
26 allowed equity interest in the Debtor. The Plan Trustee could not definitively answer the question and subsequently
filed a Notice of Requested Information ("Notice") after the Hearing. Adv. DE 253. Defendants responded to the
Notice, reiterating that "no party traded a creditor claim against the Debtor for an equity interest in the Debtor either
in the course of the Debtor's bankruptcy proceedings or pursuant to the Debtor's Plan." Adv. DE 255.

1 **To be Noticed through the BNC to:**
2 Interested Parties
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